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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,865	03/16/2001	Stephen J. Brown	HERO-1-1112	6556
32042	7590	01/13/2006	EXAMINER	
PATTON BOGGS LLP 8484 WESTPARK DRIVE SUITE 900 MCLEAN, VA 22102				PHAN, THAI Q
		ART UNIT		PAPER NUMBER
		2128		

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/810,865	BROWN, STEPHEN J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Thai Q. Phan	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 October 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 37-39, 51-54, 62, 67 and 68 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 37-39, 51-54, 62, 67 and 68 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 16 March 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

This Office Action is in response to RCE application serial number 09/810,865, filed on 10/25/2005. Claims 37-39, 51-54, 62, 67, and 68 are pending in the action.

### ***Information Disclosure Statement***

The information disclosure statement filed 09/20/2005 fails to comply with 37 CFR 1.97(c) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

### ***Terminal Disclaimer***

The terminal disclaimer filed on 09/20/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the US patent no. 5,956,501 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before

Art Unit: 2128

the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 37-39, 51-54, 62, 67, and 68 are rejected under 35 U.S.C. 102(e) as being anticipated by Kehr, Bruce, US patent no. 5,642,731.

As per claim 37, Kehr anticipates a microprocessor-based system for monitoring and recording outputs of clinical information data of a patient under a health care system with feature limitations very identical to the claimed invention. According to Kehr, the system includes

An electronic data recording device configured for receiving a prior disease control parameter value (col. 3, line 16 to col. 4, line 47, for exemplary),

A memory for storing control parameters and its values (col. 6, lines 3-24, lines 55-64, col. 7, lines 2-60, for example),

A microprocessor in communication with the electronic recording device and memory for calculating a further value, which is based on control parameter values, disease care, and scaling factor,

A display means for displaying information according to the calculated values for the disease for the appropriate action to control the disease (Figs. 28-30, cols. 9-23).

As per claims 38-39, Kehr anticipates a housing for assembling the apparatus above to a single unit as shown in Figs. 1-2.

As per claims 51-54 and 62, 67, and 68, Kehr anticipates the claimed invention for monitoring and controlling disease according to health care information and patient input data under control.

***Response to Arguments***

Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
  1. US patent no. 5,758,652, issued to Nikolic, Serjan, on June 1998
  2. US patent no. 6,246,975, issued to Rivonelli et al, on June 2001
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thai Phan whose telephone number is 571-272-3783.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2128

3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jan. 06, 2006

  
Thai Phan  
Patent Examiner